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FIVE DOLLS. PER ANN. | FRIDAY, MARCH 18th, 1803. | PAID IN ADVANCE.

ADVERTISEMENT.

On THURSDAY the twenty first day of April, if fair, if not the next fair day, will be exposed to sale on the premises, in the town of Alexandria, the following parcels of

LAND,

Late the property of John Fitzgerald, deceased, sold pursuant to the directions of his will for the payment of his debts, to wit:

ONE parcel of land lying upon the east side of Union street, and to the northward of Wilkes street, fronting seventy-eight feet upon Union street, and extending about two hundred feet in the river, having an alley of twenty feet running the whole depth; upon this is erected a frame ware-house; the ground is subject to an annual rent of 9l. 17s. 6d. It will be sold altogether, or divided, to accommodate purchasers. One half of a brewery, with all the implements and utensils necessary for carrying on the business upon a large scale, and a parcel of ground appertaining to it, fronting about forty feet upon Water street. The whole of the brewery and ground is now under a demise, at a rent of six hundred dollars per annum. A piece of ground immediately joining on the brewery, and fronting about forty feet on Water-street, and extending one hundred and fifty feet on a twenty feet alley. A piece of ground fronting on Wolfe and St. Asaph streets. This will be laid off into convenient Lots. A piece of ground lying upon the south side of King-street, extending 82 feet to a twelve feet alley—in the front is erected a two story brick dwelling house, and upon the alley a two story frame ware-house. A piece of ground lying upon Union and Wolfe-streets, extending with Wolfe-street 62 feet and an half, with Union street 120 feet. Upon this there are erected a large distillery, ware house and compting-ing room. The improvements were calculated for carrying on that business upon an extensive scale; there are three stills in it. Not having been occupied for some time past, the property is something out of repair. The ground is subject to an annual rent of 43l. 18s. od. There will be sold at the same time, a small tract of land contiguous to the town, containing 37 acres. This is subdivided, and will be sold in small parcels containing from 4 to 6 acres. The sale will be continued till the whole is sold

The terms of sale are one fourth of the purchase money in hand when deeds will be executed to the purchasers; one other fourth in six months after the sale; one other fourth in twelve months, and the remaining fourth in eighteen months; for securing these payments deed of trust will be required upon the property conveyed from each purchaser for his part.

THOMAS A. DIGGS,
JAMES KEITH,
Acting Executors of John Fitzgerald.

March 16. ept2st

PROPOSALS

Will be received by the Subscriber, until the 10th of April next, from the Cabinet makers within the district of Columbia,

FOR making thirty six Mahogany chair frames and a number of Mahogany tables, for the use of the House of Representatives of the United States, to be delivered at the Capitol at such time as may hereafter be fixed on.

Such persons as incline to offer proposals may see patterns by which they will be enabled to make their estimates, by calling at the Capitol.—The estimates to be made for the first quality of work and the best materials.

THOMAS CLAXTON,
Capitol Hill.

March 16, 1803. taw11thA.

A Valuable Farm for Sale.

BY virtue of a decree of the Chancellor of Maryland, had in the case of WM. H. DORSEY, Complainant, against JOHANNA and PETER CASANAVE, infant acirs and ANN CASANAVE and NICHOLAS YOUNG, administrators of PETER CASANAVE, Defendants.—The Subscriber will on Friday the 18th day of March next, offer for sale at public auction, the plantation or farm called "Fair Hill," and the adjoining Tract of Land called "George the Third" containing in the whole about 450 acres. The said Lands will be sold together. This Land is advantageously situated, being about 18 miles distant from George Town, and about 8 miles from Montgomery Court House. The Land is of goop quality, and has more than a plentiful supply of Wood and Timber. The improvements upon it are costly, being a large and convenient dwelling house, Brick stable, and other necessary outhouses. The Sale will take place at 12 o'clock at the dwelling house at Fair Hill, at which W. H. Dorsey formerly resided.

Terms of Sale.—The purchaser to pay to the subscriber the sum of 1350 £ current money, immediately on the ratification of the Sale. And give bond with security to be approved by the Chancellor to pay the residue of the purchase money within six months from the day of sale, with interest from the date. After ratification of the sale and receipt of the whole purchase money, a conveyance will be made by the subscriber to the purchaser of aforesaid property and his or her heirs of all the right, title and estate of the petitioner and of the dependants or either of them hereto.

SAMUEL BROOKE, Trustee.

N B. One quarter of an acre including the family burial ground at Fair hill is excepted from the sale.

Feb. 22, 1803. ept18M.

Supreme Court of United States,
February term, 1803.

William Marbury vs. James Madison, Secretary of State of the United States.

AT the last term, viz. December term, 1801, William Marbury, Dennis Ramsay, Robert Townsend Hooe, and William Harper, by their Counsel, Charles Lee, Esq. late attorney general of the United States, severally moved the Court for a rule to James Madison, Secretary of State of the United States, to shew cause why a mandamus should not issue commanding him to cause to be delivered to them respectively their several commissions as Justices of the peace in the district of Columbia. This motion was supported by affidavits of the following facts; that notice of this motion had been given to Mr. Madison; that Mr. Adams, the late President of the United States, nominated the applicants to the Senate for their advice and consent to be appointed justices of the peace of the district of Columbia, that the senate advised and consented to the appointments—that commissions in due form were signed by the said President appointing them justices, &c. and that the seal of the United States was in due form affixed to the said commissions by the Secretary of State; that the applicants have requested Mr. Madison to deliver them their said commissions, who has not complied with that request; and that their said commissions are withheld from them; that the applicants have made application to Mr. Madison as Secretary of State of the United States at his office, for information whether the commissions were signed and sealed as aforesaid; that explicit and satisfactory information has not been given in answer to that enquiry, either by the secretary of state or any officer in the department of state—that application has been made to the secretary of the senate for a certificate of the nomination of the applicants, and of the advice and consent of the senate, who has declined giving such a certificate; whereupon a rule was laid to shew cause on the 4th day of this term. This rule having been duly served.

Mr. Lee in support of the rule observed that it was important to know on what ground a justice of peace in the district of Columbia holds his office, and what proceedings are necessary to constitute an appointment to an office not held at the will of the President. However notorious the facts are, upon the suggestion of which this rule has been laid, yet the applicants have been much embarrassed in obtaining evidence of them. Reasonable information has been denied at the office of the department of stat. Although a respectful memorial has been made to the Senate praying them to suffer their secretary to give extracts from their executive journals respecting the nomination of the applicants to the senate, and of their advice and consent to the appointments, yet their request has been denied, and their petition rejected. They have therefore been compelled to summon witnesses to attend in court, whose voluntary affidavits they could not obtain. Mr. Lee here read the affidavit of Dennis Ramsay, and the printed Journals of the senate of 31 January, 1803, respecting the refusal of the senate to suffer their secretary to give the information requested. He then called Jacob Wagner and Daniel Brent, who had been summoned to attend the court, and who had, as it is understood, declined giving a voluntary affidavit. They objected to being sworn, alledging that they were clerks in the department of state and not bound to disclose any facts relating to the business or transactions in the office.

Mr. Lee observed, that to shew the propriety of examining these witnesses, he would make a few remarks on the nature of the office of secretary of state. His duties are of two kinds, and he exercises his functions in two distinct capacities; as a public ministerial officer of the United States, and as agent of the President. In the first his duty is to the United States or its citizens; in the other his duty is to the President; in the one he is an independent, and an accountable officer; in the other he is dependent upon the President, is his agent, and accountable to him alone. In the former capacity he is compellable by mandamus to do his duty, in the latter he is not. This distinction is clearly pointed out by the two acts of Congress upon this subject. The 1st was passed 27th July, 1789, vol. 1, p. 359, entitled "an act for establishing an executive department to be denominated the department of foreign affairs. The first section ascertains the duties of the Secretary so far as he is considered as a mere executive agent. It is in these words, "Be it enacted, &c. that there "shall be an executive department, to "be denominated the department of foreign affairs, and that there shall be a "principal officer therein, to be called "the secretary of the department of foreign affairs, who shall perform and "execute such duties as shall from time "to time be enjoined on, or intrusted to "him by the President of the United "States agreeable to the constitution, "relative to correspondencies, commissions or instructions to or with public ministers or consuls from the United States—or to negociations with "public ministers from foreign states or "princes, or to memorials or other applications from foreign public ministers, or other foreigners, or to such "other matters respecting foreign affairs as the President of the United "States shall assign to the said department; and furthermore that the said "principal officer shall conduct the business of the said department in such "manner as the President of the United "States shall from time to time order "or instruct."

The 2d Sec. provides for the appointment of a chief clerk; the 3d Sec. prescribes the oath to be taken which is simply, "well and faithfully to execute "the trust committed to him"; and the 4th and last Sec. gives him the custody of the books and papers of the department of foreign affairs under the old Congress. Respecting the powers given and the duties imposed by this act, no mandamus will lie. The secretary is responsible only to the President. The other act of Congress respecting this department was passed at the same session on the 15th September 1789, vol. I p. 41, c. 14, & is intitled "an "act to provide for the safe keeping of "the acts, records, and seal of the United "States, and for other purposes."—The 1st Sec. changes the name of the department and of the secretary, calling the one the department and the other the secretary of state.—The 2d Sec. assigns new duties to the secretary, in the performance of which it is evident, from their nature, he can not be lawfully controlled by the President, and for the non-performance of which he is not more responsible to the President than any other citizen of the United States. It provides that he shall receive from the President all bills, orders, resolutions and votes of the Senate and house of representatives, which shall have been approved and signed by him—and shall cause them to be published, and printed copies to be delivered to the Senators and Representatives and to the executives of the several states; and makes it his duty carefully to preserve the originals; and to cause them to be recorded in books to be provided for that purpose. The 3d Sec. provides a seal of the United States. The 4th makes it his duty to keep the said seal, and to make out and record, and to affix the seal of the United States to all civil commissions, after they shall have been signed by the President. The 5th Sec. provides for a seal of office, and that all copies of records and papers in his office, authenticated under that seal, shall be as good evidence as the originals. The 6th Sec. establishes fees for copies &c. The 7th and last Sec. gives him the custody of the papers of the office of the Secretary of the old Congress. Most of the duties assigned by this act are of a public nature, and the Secretary is bound to perform them, without the controul of any person. The President has no right to prevent him from receiving the bills, orders, resolutions and votes of the legislature, or from publishing and distributing them, or from preserving or recording them. While the secretary remains in office the President cannot take from his custody the seal of the United States, nor prevent him from recording, and affixing the seal to civil commissions of such officers as hold not their offices at the will of the President, after he has signed them and delivered them to the secretary for that purpose. By other laws he is to make out and record in his office patents for useful discoveries, and patents of lands granted under the authority of the United States. In the performance of all these duties he is a public ministerial officer of the United States. And the duties being enjoined upon him by law, he is, in executing them, uncontroulable by the President; and if he neglects or refuses to perform them, he may be compelled by mandamus, in the same manner as other persons holding offices under the authority of the United States. The President is no party to this case. The secretary is called upon to perform a duty over which the President has no controul, and in regard to which he has no dispensing power, and for the neglect of which he is in no manner responsible. The secretary alone is the person to whom they are entrusted, and he alone is answerable for their due performance. The secretary of state, therefore, being in the same situation, as to these duties, as every other ministerial officer of the United States, and equally liable to be compelled to perform them, is also bound by the same rules of evidence. These duties are not of a confidential nature, but are of a public kind, and his clerks can have no exclusive privileges. There are undoubtedly facts, which may come to their knowledge by means of their connexion with the Secretary of State, respecting which they cannot be bound to answer. Such are the facts concerning foreign correspondencies, and confidential communications between the head of the department and the President. This, however, can be no objection to their being sworn, but may be a ground of objection to any particular question. Suppose I claim title to land under a patent from the United States, I demand a copy of it from the Secretary of State. He refuses. Surely he may be compelled by mandamus to give it. But in order to obtain a mandamus, I must shew that the patent is recorded in his office. My case would be hard indeed if I could not call upon the clerks in the office to give evidence of that fact. Again suppose a private act of Congress had passed for my benefit. It becomes necessary for me to have the use of that act in a court of law. I apply for a copy. I am refused. Shall I not be permitted, on a motion for a mandamus, to call upon the clerks in the office to prove that such an act is among the rolls of the office, or that it is duly recorded? Surely it cannot be contended that altho' the laws are to be recorded, yet no access is to be had to the records, and no benefit to result therefrom.

The Court ordered the witnesses to be sworn and their answers taken in writing, but informed them that when the questions were asked they might state their objections to answering each particular question, if they had any.

Mr. Wagner being examined upon interrogatories, testified, that at this distance of time he could not recollect whether he had seen any commission in the office, constituting the applicants, or either of them justices of the peace. That Mr. Marbury and Mr. Ramsay called on the Secretary of State respecting their commissions. That the Secretary referred them to him—he took them into another room and mentioned to them, that two of the commissions had been signed, but the other had not.—that he did not know that fact of his own knowledge, but by the information of others. Mr. Wagner declined answering the question "Who gave him that information"; and the Court decided that he was not bound to answer it, because it was not pertinent to this cause. He futher testified that some of the commissions of the justices, but he believed not all, were recorded. He did not know whether the commissions of the applicants were recorded, as he had not had recourse to the book for more than twelve months past.

Mr. Daniel Brent, testified that he did not remember certainly the names of any of the persons in the commissions of justices of the peace signed by Mr. Adams; but believed, and was almost certain, that Mr. Marbury's and Col. Hooe's commissions were made out, and that Mr. Ramsay's was not; that he made out the list of names by which the clerk who filled up the commissions was guided; he believed that the name of Mr. Ramsay was pretermitted by mistake, but to the best of his knowledge it contained the names of the other two—he believed none of the commissions for justices of the peace signed by Mr. Adams, were recorded. After the commissions for justices of the peace were made out, he carried them to Mr. Adams for his signature. After being signed he carried them back to the Secretary's office where the seal of the United States was affixed to them.—that commissions are not usually delivered out of the office before they are recorded; but sometimes they are, and a note of them only is taken, and they are recorded afterwards. He believed none of those commissions of justices were ever sent out, or delivered to the persons for whom they were intended—he did not know what became of them, nor did he know that they are now in the office of the Secretary of State.

Mr. Lincoln, Attorney General, having been summoned, and now called, objected to answering. He requested that the questions might be put in writing, and that he might afterwards have time to determine whether he would answer. On the one hand he respected the jurisdiction of this court, and on the other he felt himself bound to maintain the rights of the executive. He was acting as Secretary of State at the time when this transaction happened. He was of opinion, and his opinion was supported by that of others whom he highly respected, that he was not bound, and ought not to answer, as to any facts which came officially to his knowledge while acting as Secretary of State.

The questions being written were then read and handed to him. He repeated the ideas he had before suggested, and said his objections were of two kinds.

1st. He did not think himself bound to disclose his official transactions while acting as Secretary of State; and

2d. He ought not to be compelled to answer any thing which might tend to criminate himself.

Mr. Lee, in reply, repeated the substance of the observations he had before made in answer to the objections of Mr. Wagner and Mr. Brent. He stated that the duties of a Secretary of State were two-fold. In discharging one part of those duties he acted as a public ministerial officer of the United States, totally independent of the President, and that as to any facts which came officially to his knowledge while acting in this capacity, he was as much bound to answer, as a marshal, a collector, or any other ministerial officer. But that in the discharge of the other part of his duties, he did not act as a public ministerial officer, but in the capacity of an agent of the President, bound to obey his orders, and accountable to him for his conduct. And that as to any facts which came officially to his knowledge in the discharge of this part of his duties, he was not bound to answer.—He agreed that Mr. Lincoln was not bound to disclose any thing which might tend to criminate himself.

Mr. Lincoln thought it was going a great way to say that every Secretary of state should at all times be liable to be called upon to appear as a witness in a court of justice and testify to facts which came to his knowledge officially. He felt himself delicately situated between his duty to this court, and the duty he conceived he owed to an executive department; and hoped the court would give him time to consider of the subject.

The court said, that if Mr. Lincoln wished time to consider what answers he should make, they would give him time; but they had no doubt he ought to answer. There was nothing confidential required to be disclosed. If there had been he was not obliged to answer it; and if he thought that any thing was communicated to him in confidence he was not bound to disclose it; nor was he obliged to state any thing which would criminate himself; but that the fact whether such commissions had been in the office or not, could not be a confidential fact; it is a fact which all the world have a right to know. If he thought any of the questions improper, he might state his objections.

Mr. Lincoln then prayed time till the next day to consider of his answers under this opinion of the court.

The court granted it and postponed further consideration of the cause till the next day.

At the opening of the court on the next morning, Mr. Lincoln said he had no objection to answering the questions proposed, excepting the last which he did not think himself obliged to answer fully. The question was, what had been done with the commissions. He had no hesitation in saying that he did not know that they ever came to the possession of Mr. Madison, nor did he know that they were in the office when Mr. Madison took possession of it. He prayed the opinion of the court whether he was obliged to disclose what had been done with the commissions.

The court were of opinion that he was not bound to say what had become of them;—if they never came to the possession of Mr. Madison, it was immaterial to the present cause, what had been done with them by others.

To the other questions he answered that he had seen commissions of Justices of the Peace of the district of Columbia, signed by Mr. Adams, and sealed with the seal of the United States. He did not recollect whether any of them constituted Mr. Marbury, Col. Hooe or Col. Ramsay Justices of the Peace; there where when he went into the office several commissions for Justices of